Ochieng & 9 others v Vegpro (K) Ltd (Civil Appeal 30 of 2022)
[2025] KEELRC 1841 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1841 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CIVIL APPEAL 30 OF 2022

MA ONYANGO, J

JUNE 20, 2025

BETWEEN

NICHOLAS OCHIENG & 9 OTHERS & 9 OTHERS & 9 OTHERS & 9 OTHERS & 9 OTHERS ..... APPELLANT

AND

VEGPRO (K) LTD ..... RESPONDENT

(Being an appeal from the judgment/decree of Hon. A. Towett (SRM) Eldama - Ravine Law Courts delivered on 30th June 2022 in CMELRC No. 2,3,4,5,6,8,9,10,11 & 12 of 2016 (Consolidated))

JUDGMENT

Background

1. These appeals emanate from the decision made by the trial court following suits filed by the Appellants where they had sued the Respondent seeking compensation for injuries they alleged to have sustained while in the course of their employment.

2. In the lower court, ten suits being Eldama Ravine CMCC Nos 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of 2016 were consolidated, and CMCC No. 4 of 2016 was selected as the lead file.

3. The trial court after hearing the suit delivered its judgment dismissing the Appellants suit on grounds that the Appellants had not established the existence of a contract of employment between themselves and the Respondent, and as such, the Appellants could not maintain an action based on a contract of employment.

4. The Appellants (Plaintiffs in the lower court) were aggrieved by the said judgment and filed a Memorandum of Appeal on the 1st July 2022 on the grounds that:

    i. The learned trial magistrate erred in law and in fact by not carefully, diligently, dutifully and or properly analyzing, scrutinizing, reading and or considering the pleadings, proceedings, evidence /exhibits/ materials on record, submissions and or the applicable law and principles in regard to Appellants suit/ claims herein while arriving at her decision.

    ii. The learned trial magistrate erred in law and in fact by holding that the Appellant(s) herein jointly and severally had not proved their respective cases to the required standards and consequently dismissing them.

    iii. The learned trial magistrate erred in law and in fact by holding that there was no sufficient evidence to proof that the Appellant(s) herein jointly and or severally were employees of the Respondent herein

    iv. The learned trial magistrate erred in law and in fact by not applying the correct measure and or principles in regard to standard and burden of proof when arriving at her decision/judgement.

    v. The learned trial magistrate erred in law and in fact by holding that there was a test suit among the Appellants suits/claims herein.

    vi. The learned trial magistrate erred in law and in fact by duplicating/applying her findings in one case to all other cases.

    vii. The learned trial magistrate erred in law and in fact by reaching a decision/ judgment that is contrary to the pleadings, materials, evidence and or submissions on record.

5. Consequently, the Appellants sought the following orders:-

    i. That this appeal be allowed and the judgment/decree of the trial court delivered on or about 30th June 2022 be reversed, reviewed and/or set aside

    ii. That this honorable court be pleased to allow the Appellants cases/claims herein jointly and or severally and assess damages awardable.

    iii. That costs of this appeal and Costs of Appellant(s) suit in the lower court be borne by the Respondent.

    iv. Any other remedy(ies) that the court might deem fit taking into account all the circumstances of this case.

Background of the case

6. I note that the Appellant's counsel filed grounds of Appeal on the lead file, that is CMCC No. 4 of 2016 and I find it proper that the court adopts the 1st Appellant's suit as the lead file in this judgment.

7. The 1st Appellant in his Plaint dated 18th January 2016 filed at the lower court contended that he was an employee of the Defendant (Respondent herein) at its premises and that on 21st September 2015, he was dutifully and lawfully in the course of employment aboard a trailer which was being pulled by

a tractor registration No. KAR 129M when the said trailer crashed, tipped over and overturned as a result of which the 1st Appellant sustained serious bodily injuries.

8. The 1st Appellant attributed the occurrence of the accident to the Respondent's failure to provide him with a safe, adequate and lawful means of access to his place of work.

9. In its statement of defence dated 8th March 2016, the Respondent denied the allegations made in the plaint and in particular that the 1st Appellant was its employee.

10. The Trial Magistrate upon considering the evidence on record and submissions by the parties dismissed the 1st Appellant's suit with costs on the basis that the 1st Appellant did not established the existence of a contract of employment between himself and the Respondent.

The Appeal

11. When the appeal was placed before the court for directions, parties agreed to have the appeal disposed of by way of written submissions. The Appellants filed their submissions on 13th January 2025 whereas the Respondent filed its submissions on 3rd February 2025.

The Appellants' Submissions

12. In their submissions, the Appellants summarized the grounds of Appeal into two main grounds. That: -

    i. The learned trial magistrate erred in law and in fact by holding that CMCC No. 4 of 2016 was a test suit as opposed to a lead file.

    ii. The learned trial magistrate erred in law and in fact by not carefully, diligently, dutifully and or properly analyzing, scrutinizing, reading and or considering the pleadings, proceeding, proceedings, evidence/exhibits/materials on record, submissions and the applicable law and principles in regard to Appellants suit/ claims herein while arriving at her decision

13. On the first issue, the Appellants while faulting the trial magistrate for holding CMCC No. 4 of 2016 as a test suit as opposed to it being a lead file submitted that all the said matters were consolidated and CMCC No. 4 of 2016 chosen as a lead file and not a test suit and that as such, the learned trial magistrate did not appreciate the nature of the proceedings before her and which failure led her to make the aforesaid erroneous decision.

14. Counsel for Appellants submitted that the procedure of handling and dealing with matters where there is a test suit and a lead file are very different and distinct in that where a test suit is selected, all the other suits are usually stayed pending the hearing and determination of the test suit whose determination abides the other files but where a lead file is selected, all suits are consolidated and proceeds for hearing simultaneously with proceedings being recorded in the lead file.

15. It is the Appellants submission that the trial magistrate ought to have considered evidence of all Appellants jointly vis a vis that of the Respondent and proceed to write judgement taking into account the totality of the evidence in the lead file but not write judgement in respect to the lead file only and have its determination apply to the rest of the cases as if the lead file was a test suit.

16. In this regard, the Appellants submitted that the learned trial magistrate acted under a mistake of law and misapprehension of the record and hence urged the court to interfere and overturn her decision.

17. On the second issue, the Appellants submitted that no evidence was availed by the Respondent to the effect that it issued its employees with employment documents or pay slips to warrant the trial court's

adverse finding that the Appellants didn't prove their case for failure to produce such documents. The Appellants submitted that it was erroneous, unrealistic and impractical for the court to find that the Appellants failed to prove their case for not producing employment documents without evidence that the Respondent issued all its employees with such documents in the first place.

18. It is the Appellants submission that there being no evidence of any employment documents being issued by the Respondent to its employees, the learned trial magistrate ought not to have considered nor based her decision on the said issue at all.

19. The Appellant also submitted that DW1 in his evidence admitted that the Respondent had other records of its employees including where his name was indicated and other handwritten ones which had been used in other court cases of the Record which were produced as PEXB-7 and the same had not been produced/availed in court by the Respondent herein.

20. The Appellants maintained that the learned trial magistrate failed to note that it is the legal duty of the employer to keep and issue employment records to its employees and failure to do so can only be visited upon the employer and not the innocent employees.

21. In addition, the Appellant submitted that the learned trial magistrate failed to note that DW 1 was not competent to testify

about the accident herein since he was not present and that the Respondent never called the tractor driver to come and shed light on the alleged incident.

22. On this basis, the Appellants urged the court to re-look at the entire record and make its own findings and to allow the Appeal herein, uphold the Appellants cases and determine the appropriate awards. The Appellant also sought for costs of the Appeal.

The Respondent's Submissions

23. The Respondent submitted that the determination of this appeal revolves around the question whether the Appellants proved their case on the balance of probabilities. According to the Respondent, the Appellants ought to have proved their cases of an employment relationship as required under section 107(1) and (2) of the *Evidence Act*. It is therefore the Respondent's submission that the finding by the trial court that there was no employment relationship was correctly arrived at. To buttress this point, the Respondent cited the case of Devki Steel Mills Limited v John Mbuvi Mackenzie, where Prof Justice Joel Ngugi (as he then was) held that;-

> " I agree wholly with the reasoning by Justice Mabeya. A work place injury claim is predicated firstly on the employment relationship between the parties".

24. In the end, the Respondent submitted that the Appellants did not prove any employment relationship with the Respondent, and that the issue of negligence that resulted to prayer for damages must fall because for a claim of negligence to succeed, the alleger must prove; duty of care, breach of that duty of care and that the injury suffered came as a result of the breach of that duty of care.

25. On this basis, the Respondent submitted that since the employment relationship was not proved, the subsequent elements of negligence that presupposes the duty of care should follow suit and fail.

26. In conclusion, the Respondent submitted that the Learned Trial Magistrate considered the facts pleaded and proved. The court was urged to dismiss this Appeal with costs to the Respondent.

Analysis and Determination

27. The duty of the first appellate court was explained in the case of Abok James Odera T/A A.J. Odera & Advocates v John Patrick Machira T/A Machira & Co., Advocates (2013) eKLR as;

> " On a first appeal from the High Court, the Court of Appeal should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence."

28. Upon careful consideration of the Appeal herein, the seven grounds of appeal are condensed into the following two grounds: -

i. Whether the trial court erred in applying the findings of the test suits to the other consolidated matters

ii. Whether the Trial court's finding that the Appellants did not establish an employment relationship was supported by law and the evidence tendered.

iii. What reliefs should issue

Whether the trial court erred in applying the findings of the test suit to the other consolidated matters

29. In its submissions, the Appellant contended that the learned trial magistrate acted under a mistake of law and misapprehension of the record by holding CMCC No. 4 of 2016 as a test suit as opposed to it being a lead file. It is submitted that the trial court ought to have considered evidence of all Appellants jointly vis a vis that of the Respondent and proceed to write judgement taking into account the totality of the evidence in the lead file but not write judgement in respect to the lead file only and have its determination apply to the rest of the cases as if the lead file was a test suit.

30. From a perusal of the impugned judgment, the trial court in dismissing the appellant's suit observed as follows:-

> " In the circumstances and after consideration of the evidence tendered and submissions made by counsel for both parties, I find that the plaintiff herein has not established the existence of a contract of employment either directly or remotely to give rise to any right and obligations on the part of the parties. I therefore find and hold that the plaintiff has not established that he was an employee of the defendant company.
>
> Having found as such, the plaintiff therefore could not maintain an action based on a contract of employment. I therefore proceed to dismiss the plaintiff suit with costs."

31. The trial court went on to state:-

> " This file was taken as a test suit and the rest of the plaintiffs in the sister file No. 2/2016, 3/2016,5/2016,6/2016,8/2016, 9/2016,10/2016,11/2016 and 12/2016 testified in this file.
>
> Having made a determination to dismiss this test suit, all the above stated files and plaintiff's case are similarly dismissed with cost to the defendant."

32. The proceedings of the trial court on 19th April 2016 at page 397 of the Record of Appeal indicate that the matters herein were consolidated with file no. 4/2016 taken as the lead file.

33. It therefore follows that the trial court erred in making a finding that file no. 4/2016 was taken as a test suit and applying the decision therein in all the other files when in deed there was only one file for the consolidated suits.

Whether the Trial court's finding that the Appellants did not establish an employment relationship was supported by law and the evidence tendered.

34. The primary duty of demonstrating and proving the existence of an employer/employee relationship is always on the alleging employee, unless the employer admits having employed the alleged employee.

35. In this case, the Respondent in its pleadings at the trial court denied that the Appellants were its employees. The Respondent called Samuel Maina who testified as DW1 in support of the Respondent's case. The Respondent denied the occurrence of an accident on the material day and further averred that the Respondent transports its workers using a bus and not tractors. To buttress the Respondent's position that the Appellants were not its employees, the Respondent's witness produced several payment schedules. The first is for employees paid through Skyline Sacco for work done for the period between 26th August and 25th September 2015. The second is for employees paid through Boresha Sacco for the period 26th August and 25th September, 2015. The third is for employees paid cash for the period between 16th and 30th September, 2015. All these payment schedules are printed out.

36. The Plaintiffs' Further List of Documents dated 9th May, 2016 at page 50 of the Record of Appeal is a copy of a hand written document titled August FOSA Wages with 12 names of employees indicating daily output including a dash (-) for days when the employee did not perform any work.

37. At pages 52 to 56 of the Record of Appeal is a Daily Production Record, also hand written, produced by the Respondent in its Documents Accompanying the Defence. It contains 190 names of employees.

38. The Appellants testified that they live in Lomolo-Mogotio and that they were working for the Respondent. They further contended that the accident occurred when they were on their way to work aboard a trailor attached to and hauled by the Respondent's tractor registration No. KAR 129M. It was their testimony that the road was not good and that the driver was speeding as he had arrived late to pick the workers. They testified that this was their usual mode of transport and that the tractor ferried about 70 people per trip. PW1 in particular stated that the company has a bus which ferries workers to work but those from Lomolo use the tractor.

39. PW2 testified that their names were recorded by hand in the daily production records which were not produced by the Respondent. PW4 also testified that the book in which her name was recorded daily by the supervisor was not produced while PW5 testified that his name was hand written in a black book by the supervisor by pen and that what was produced by the Respondent was not the original record as it was a printed record. PW6 reiterated the same and stated that what was produced by the Respondent is not the document in which her name was entered whenever she reported to work. PW7, PW10, PW11 all reiterated that their names were recorded daily by hand in a register that was not produced in court.

40. According to DW1, the names of the Appellants did not appear in the printed documents produced by the Respondent, confirming that they were not employees of the Respondent. Section 10(1) and (2) require an employer to keep records of its employee and section 10(6) requires such records to be produced by an employer whenever there is a dispute in respect of such records. The burden of proof shifts to the employer who fails to produce such records as provided in section 10(7) of the Act. it is

therefore my finding that the Respondent failed to produce the daily records that would have proved the Appellants were not its employees.

41. Based on the hand-written record at pages 50 of the Record of Appeal produced by the Appellants and at pages 52 to 56 produced by the Respondent, I am persuaded that all the Appellants were employees of the Respondent and that the Respondent did not produce the original records in which their names were written by hand whenever they reported to work.

42. Having established proof that the Appellants herein were employees of the Respondent, I will now proceed to determine whether they are entitled to the prayers they sought in their respective claims at the trial court.

43. According to the Appellants, the accident occurred when the trailer got disconnected from the tractor after the pin attaching it to the tractor got dislodged. It was their evidence that they did not report the accident to the police as the nearest police station was about 7 km away. Some of the Appellants testified that they did not go for treatment immediately as their injuries were not very serious and they did not have money so they took pain killers. They were treated at Mogotio Health Centre on different dates after the accident.

44. From the detailed accounts of the accident by each of the Appellants and the fact that the Respondent did not adduce any evidence by a person who worked on the tractor especially the driver who prepared a witness statement, or the work ticket for the tractor indicating where the tractor was on the day of the accident, I am convinced that an accident occurred on 21st September 2015 involving the Respondent's tractor registration number KAR 129M and that as a result, the Appellants sustained the injuries as confirmed by their medical reports prepared by Dr. Wellington K. Kiamba.

45. The 1st Appellant, at trial testified as PW1 and averred that on 21st September 2015, he was aboard a tractor Reg. No. KAR 129M when the pin of the trailer got disconnected from the tractor as a result of which the tractor fell. He contended that he sustained injuries to his left thigh and that he which he treated as an outpatient at Mogotio Health Center. The plaintiff produced the treatment chits from Mogotio Health Centre as PExb 3. He also produced a medical report, PExb, by Dr. Wellington K. Kiamba which report indicated that the 1st Appellant had suffered soft tissue injuries to his left hip joint.

46. In the case of Southern Engineering Company Ltd. v Musingi Mutia [1985] KLR 730, the Court of Appeal set out the principles which should guide a court in awarding damages as follows;

> " It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated... The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment... It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same,

> either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

47. In his submissions at the trial court, the 1st Appellant opined that an award of Kshs 200,000 would be adequate to compensate him for the injuries he sustained as a result of the accident that occurred while he was aboard the Respondent's tractor on his way to work. He also sought to be awarded Kshs 8,130 as special damages.

48. I have noted that the treatment chit produced by the 1st Appellant at the trial court indicates that the 1st Appellant was treated on 5th October 2015. In the case of HB (Minor suing through mother and next friend DKM) v Jasper Nchonga Magari & another [2021] eKLR the court awarded Kshs 60,000 and affirmed on appeal for multiple soft tissue injuries on the neck, thorax, abdomen and limbs. However, the injuries in the case at hand are less severe. I therefore award the 1st Appellant Kshs 50,000 as compensation for the injuries he sustained as a result of the accident that occurred on 21st September 2015.

49. On special damages, the 1st Appellant has sought Kshs 8,130 being hospital bills and cost of the medical report as well as the receipt of Kshs 130 for the treatment chit. At page 18 of the Record of Appeal volume 1, there is a receipt for Kshs 50 and for Kshs 80. The 1st Appellant also produced the receipt for the medical report as PExb 4. I therefore award the 1st Appellant Kshs 8,130 as special damages which amount was specifically pleaded and proved.

50. The 2nd Appellant, Michael Wachira in his testimony at trial stated that he sustained soft injuries to the neck and chest. These injuries were confirmed by Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 2nd Appellant and issued him with the medical report dated 14th December 2015. In the report, the doctor classified the degree of injury suffered by the 2nd Appellant as "harm' and opined that he be awarded a temporary disability of 6 weeks.

51. In his submissions at the trial court, the 2nd Appellant opined that an award of Kshs 150,000 would be adequate to compensate him for the injuries he sustained as a result of the accident that occurred while aboard the Respondent's tractor on his way to work. The 2nd Appellant also sought to be awarded Kshs. 8,080 as special damages.

52. In the case of Kipkere Limited v Peterson Ondieki Tai [2016] eKLR , the court awarded the Respondent Kshs 30,000 for a deep cut wound on the left leg, chest contusion and bruises on the left shoulder. Noting that the 2nd Appellant herein suffered less severe injuries and due to the passage of time, I award him Kshs 60,000 as compensation for the injuries he sustained.

53. On special damages, the 2nd Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8000 for the treatment chit and medical report respectively. I therefore award this prayer.

54. With regard to the 3rd Appellant, Vicky Chepkoech, in her pleadings and testimony before the trial court, she contended that she sustained injuries to her chest and back as a result of the accident where she was treated as an outpatient. The 3rd Appellant produced the treatment chit dated 15th December 2015 as Pexb 3. The injuries sustained by the 3rd Appellant as a result of the said accident were confirmed by Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 3rd Appellant and issued her with the medical report dated 11th November 2016. In the report, the doctor classified the degree of injury suffered by the 3rd Appellant as "harm' and opined that she be awarded a temporary disability of 2 months.

55. In her submissions at the trial court, the 3rd Appellant opined that an award of Kshs 150,000 would be adequate to compensate her for the injuries she sustained as a result of the accident that occurred while she was aboard the Respondent's tractor on her way to work. She also sought to be awarded Kshs. 8,000 as special damages.

56. Taking cue from the authority cited above HB (Minor suing through mother and next friend DKM) v Jasper Nchonga Magari & another (supra) and noting that the 3rd Appellant herein suffered less severe injuries, I award her Kshs 60,000 as compensation for the injuries she sustained.

57. On special damages, the 3rd Appellant pleaded and produced a receipt of Kshs 8000 for the medical report. I therefore award the 3rd Appellant this relief.

58. The 4th Appellant, Ruth Osimbo in her Plaint stated that as a result of the accident, she sustained severe soft tissue injuries of the middle finger, soft tissue injuries of the chest and soft tissue injuries of the lower back. Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 4th Appellant confirmed these injuries and in the medical report dated 18th October 2015, the doctor classified the degree of injury suffered by the 4th Appellant as "harm' and opined that she be awarded a temporary disability of 2 weeks.

59. In her submissions at the trial court, the 4th Appellant opined that an award of Kshs 300,000 would be adequate to compensate him for the injuries she sustained as a result of the accident. The 4th Appellant also sought to be awarded Kshs. 8,080 as special damages.

60. In George Mugo & another v A K M (Minor suing through next friend and mother of A M K [2018] eKLR the Respondent was awarded Kshs 90,000/= as general damages for the following injuries; blunt injury left shoulder, blunt chest injury interior, bruises of left wrist region and blunt injury left arm. Considering that these injuries were more severe to the injuries sustained by the 4th Appellant herein, I award the 4th Appellant Kshs 60,000 as compensation for the injuries she sustained.

61. On special damages, the 4th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8000 for the hospital bill and medical report respectively. The 4th Appellant is entitled to this award which I hereby grant.

62. The 5th Appellant, Wycliffe Musungu Mashere in his Plaint stated that he sustained severe soft tissue injuries of the middle finger, soft tissue injuries of the chest and soft tissue injuries of the lower back. Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 5th Appellant confirmed these injuries and in the medical report dated 16th October 2015, the doctor classified the degree of injury suffered by the 5th Appellant as "harm' and opined that he be awarded a temporary disability of 2 months.

63. In his submissions at the trial court, the 5th Appellant opined that an award of Kshs 300,000 would be adequate to compensate him for the injuries he sustained as a result of the accident. The 5th Appellant also sought to be awarded Kshs. 8,080 as special damages.

64. In the case Rege v LA *(Minor suing through her father and next friend GAA) (Civil Appeal E111 of 2021*) [2022] KEHC 16634 (KLR) (20 December 2022) (Judgment), the Respondent was awarded Kshs 80,000 the following injuries, bruises on the right hand, blunt trauma to the right hand and chest contusion. These injuries were also similar to the injuries sustained by the 4th Appellant and I therefore award Kshs 70,000 as compensation for the injuries he sustained.

65. On special damages, the 5th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8000 for the hospital bill and medical report respectively. The 5th Appellant is therefore entitled to this award.

66. The 6th Appellant, Irene Wambui in her Plaint stated that she sustained severe soft tissue injuries of the right shoulder and severe soft tissue injuries of the right arm. Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 6th Appellant and prepared the medical report dated 5th December 2015 classified the degree of injury suffered by the 6th Appellant was classified as soft tissue and opined that she be awarded a temporary disability of 3 months.

67. In her submissions at the trial court, the 6th Appellant opined that an award of Kshs 300,000 would be adequate to compensate him for the injuries he sustained as a result of the accident. The 6th Appellant also sought to be awarded Kshs. 8,080 as special damages.

68. Taking cue from the decision above in George Mugo & another v A K M (Minor suing through next friend and mother of A M K [2018] eKLR , I award the 6th Appellant Kshs 70,000 as compensation for the injuries she sustained.

69. On special damages, the 6th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8,000 for the hospital bill and medical report respectively. I therefore award this prayer.

70. The 7th Appellant, Johana Isaya in his pleadings averred that he sustained loss of three (3) upper incisors teeth and one lower incisor teeth and soft tissue injuries of the left knee joint. Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 7th Appellant confirmed these injuries in the medical report dated 16th October 2015.

71. In his submissions at the trial court, the 7th Appellant opined that an award of Kshs 350,000 would be adequate to compensate him for the injuries he sustained as a result of the accident. The 7th Appellant also sought to be awarded Kshs. 8,080 as special damages.

72. In the case of Patrick Kamuya & Another v Asaph Gatundu Wanjiku [2016] eKLR, the plaintiff suffered a closed fracture, loss of the 1st and 2nd incisor teeth on the lower right jaw, breaking of the 1st and 2nd incisor teeth on the lower left jaw; and a blunt injury to the 1st and 2nd incisor teeth on the upper right jaw. The plaintiff was awarded Kshs. 500,000/- as general damages. The 7th Appellant suffered less severe injuries and, in my opinion, an award of Kshs 200,000 would suffice as compensation for the injuries he sustained noting that he lost 4 teeth as a result of the accident.

73. On special damages, the 7th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8000 for the hospital bill and medical report respectively. I therefore award this prayer.

74. The 8th Appellant, Rose Auma in her testimony at trial stated that as a result of the accident she sustained soft tissue injuries of the chest and soft tissue injuries of the back. Dr. Wellington confirmed

these injuries in the medical report dated 5th December 2015 and classified the injuries as soft tissue injuries.

75. In her submissions at the trial court, the 8th Appellant opined that an award of Kshs 150,000 would be adequate to compensate her for the injuries she sustained as a result of the accident. The 8th Appellant also sought to be awarded Kshs. 8,100 as special damages.

76. Taking cue from the decision in George Mugo & another v A K M (Minor suing through next friend and mother of A M K [2018] eKLR I award the 8th Appellant Kshs 60,000 as compensation for the injuries she sustained.

77. On special damages, the 8th Appellant pleaded and produced a receipt of Kshs 100 and Kshs 8,000 for the hospital bill and medical report respectively. I award this prayer.

78. The 9th Appellant, Elijah Sarguta in his pleadings before the trial court, stated that as a result of the accident, he sustained an injury to the upper-loose upper incisors teeth and soft tissue injuries of the left hip joint. The medical report dated 16th October 2015 by Dr. Wellington K. Kiamba confirmed the injuries and classified the degree of injury suffered by the 9th Appellant was classified as "harm'. The doctor opined for the 9th Appellant to be awarded a temporary disability of 1 month.

79. In his submissions at the trial court, the 9th Appellant opined that an award of Kshs 180,000 would be adequate to compensate him for the injuries he sustained as a result of the accident. The 9th Appellant also sought to be awarded Kshs. 8,080 as special damages.

80. In Fast Choice Company Ltd & Another v Joseph Wanyiri Mwangi [2011] eKLR, the court made an award of Kshs. 150,000/= for soft tissue injuries to the head, chest, left thigh & wrist and upper gum, broken left incisor jaw, loose incisor teeth on the upper jaw. These injuries were more severe that the injuries sustained by the 9th Appellant. I therefore award the 9th Appellant Kshs 70,000 as compensation for the injuries he sustained.

81. On Special Damages, it is trite that the same must be specifically pleaded and strictly proved. The 9th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8,000 for the hospital bill and medical report respectively. I therefore award this prayer.

82. The 10th Appellant, Tom Amaasa in his Plaint filed before the trial court stated that as a result of the accident, he sustained soft tissue injuries of the chest, soft tissue injuries of the back and soft tissue injuries of the left hip joint. These injuries were confirmed by Dr. Wellington. K. Kiamba the medico-legal doctor who examined the 10th Appellant and in the medical report dated 16th October 2015, the degree of injury suffered by the 10th Appellant was classified as "harm' and the doctor opined that she be awarded a temporary disability of 6 weeks.

83. In his submissions at the trial court, the 6th Appellant opined that an award of Kshs 150,000 would be adequate to compensate him for the injuries he sustained as a result of the accident. The 10th Appellant also sought to be awarded Kshs. 8,080 as special damages.

84. Flowing from the decision in Rege v LA *(Minor suing through her father and next friend GAA) (Civil Appeal E111 of 2021*) [2022] KEHC 16634 (KLR) (20 December 2022) (Judgment), I award the 10th Appellant Kshs 60,000 as compensation for the injuries he sustained.

85. On special damages, the 10th Appellant pleaded and produced a receipt of Kshs 80 and Kshs 8,000 for the hospital bill and medical report respectively. I therefore award this prayer.

86. In the end, the judgment of the trial court dismissing the Appellants suit is set aside and substituted with the following orders.

i. The 1st Appellant is awarded

   a. General damages ..... Kshs 50,000

   b. Special damages ..... Kshs 8,130

ii. The 2nd Appellant is awarded

   a. General damages ..... Kshs 60,000

   b. Special damages ..... Kshs 8,080

iii. The 3rd Appellant

   a. General damages ..... Kshs 60,000

   b. Special damages ..... Kshs 8,000

iv. The 4th Appellant is awarded

   a. General damages ..... Kshs 60,000

   b. Special damages ..... Kshs 8,080

v. The 5th Appellant is awarded

   a. General damages .... Kshs 40,000

   b. Special damages ..... Kshs 8,080

vi. The 6th Appellant

   a. General damages .... Kshs 70,000

   b. Special damages ..... Kshs 8,080

vii. The 7th Appellant is awarded

   a. General damages ... Kshs 200,000

   b. Special damages ..... Kshs 8,080

viii. The 8th Appellant is awarded

   a. General damages ..... Kshs 60,000

   b. Special damages ..... Kshs 8,100

ix. The 9th Appellant

   a. General damages .... Kshs 70,000

   b. Special damages ..... Kshs 8,080

x. The 10th Appellant

   a. General damages ..... Kshs 60,000

   b. Special damages ..... Kshs 8,080

87. The Appellants shall have the costs of this appeal and the costs in the lower court.

88. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE